

The Colorado PUC's Redefinition Proposal Warrants Prompt FCC Concurrence

- The Petition Is Subject to Pre-*Virginia Cellular* Standards.

COPUC adopted the proposed service area redefinition in October 2003, several months prior to the release of *Virginia Cellular* and *Highland Cellular*. Accordingly, “because of the timing of the underlying state . . . decision[],” its redefinition proposal “could not be in full compliance with the factors considered in [*Highland Cellular*].” *Report and Order*, FCC 05-46 at ¶ 77 n.217, ¶ 78 (rel. March 17, 2005) (“*2005 Report and Order*”).

- The Petition Satisfies the Standards Articulated in *Virginia Cellular* and Subsequent Orders.

NECC submitted a population density analysis showing that cream-skimming will not result even if the ILECs refuse to disaggregate support. The respective population densities for areas within NECC's ETC service area and areas outside its ETC area are 2.14/16.42 (Eastern Slope), 0.84/1.72 (Sunflower Tel. Coop.), and 1.57/1.14 (Plains Coop. Tel. Assn.). With regard to Plains Coop., the difference in population density (0.43 persons per square mile) is too small to be of consequence. *Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1579 (2004).

- The Recent *2005 Report and Order* Does Not Affect NECC's Petition.

The FCC specifically declined to change its rules governing the service area redefinition process. *2005 Report and Order* at ¶ 75. Moreover, the rules and guidelines adopted in that Order apply to ETC designations under 47 U.S.C. § 214(e)(6), not the service area redefinition process set forth in 47 U.S.C. § 214(e)(5). The issue of whether NECC's designation was in the public interest was resolved with finality by the COPUC pursuant to its exclusive statutory authority under 47 U.S.C. § 214(e)(2). That finding cannot be disturbed by the FCC in this or any other context.